

Introduced by Senator Ackerman

February 16, 2005

An act to amend Section 437c of the Code of Civil Procedure, relating to summary judgment.

LEGISLATIVE COUNSEL'S DIGEST

SB 312, as introduced, Ackerman. Summary judgment.

Existing law sets forth the conditions and requirements for filing a motion for summary judgment, as specified. Existing law requires that notice of a motion for summary judgment and supporting papers shall be served on all other parties to the action at least 75 days before the time appointed for hearing.

This bill would make an exception to that requirement if the court for good cause orders otherwise or the parties stipulate otherwise.

Existing law permits a party to move for summary adjudication of one or more causes of action, affirmation defenses, claims for damages, or issues of duty.

The bill would additionally authorize a party to move for summary adjudication of a legal issue or claim for damages, other than punitive damages, that does not completely dispose of a cause of action, an affirmative defense, or an issue of duty according to specified procedures.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 437c of the Code of Civil Procedure is
2 amended to read:

1 437c. (a) Any party may move for summary judgment in any
2 action or proceeding if it is contended that the action has no merit
3 or that there is no defense to the action or proceeding. The
4 motion may be made at any time after 60 days have elapsed since
5 the general appearance in the action or proceeding of each party
6 against whom the motion is directed or at any earlier time after
7 the general appearance that the court, with or without notice and
8 upon good cause shown, may direct. Notice of the motion and
9 supporting papers shall be served on all other parties to the action
10 at least 75 days before the time appointed for hearing, *unless the*
11 *court for good cause orders otherwise or the parties stipulate*
12 *otherwise*. However, if the notice is served by mail, the required
13 75-day period of notice shall be increased by five days if the
14 place of address is within the State of California, 10 days if the
15 place of address is outside the State of California but within the
16 United States, and 20 days if the place of address is outside the
17 United States, and if the notice is served by facsimile
18 transmission, Express Mail, or another method of delivery
19 providing for overnight delivery, the required 75-day period of
20 notice shall be increased by two court days. The motion shall be
21 heard no later than 30 days before the date of trial, unless the
22 court for good cause orders otherwise. The filing of the motion
23 shall not extend the time within which a party must otherwise file
24 a responsive pleading.

25 (b) (1) The motion shall be supported by affidavits,
26 declarations, admissions, answers to interrogatories, depositions,
27 and matters of which judicial notice shall or may be taken. The
28 supporting papers shall include a separate statement setting forth
29 plainly and concisely all material facts which the moving party
30 contends are undisputed. Each of the material facts stated shall be
31 followed by a reference to the supporting evidence. The failure to
32 comply with this requirement of a separate statement may in the
33 court's discretion constitute a sufficient ground for denial of the
34 motion.

35 (2) Any opposition to the motion shall be served and filed not
36 less than 14 days preceding the noticed or continued date of
37 hearing, unless the court for good cause orders otherwise. The
38 opposition, where appropriate, shall consist of affidavits,
39 declarations, admissions, answers to interrogatories, depositions,
40 and matters of which judicial notice shall or may be taken.

1 (3) The opposition papers shall include a separate statement
2 that responds to each of the material facts contended by the
3 moving party to be undisputed, indicating whether the opposing
4 party agrees or disagrees that those facts are undisputed. The
5 statement also shall set forth plainly and concisely any other
6 material facts that the opposing party contends are disputed. Each
7 material fact contended by the opposing party to be disputed
8 shall be followed by a reference to the supporting evidence.
9 Failure to comply with this requirement of a separate statement
10 may constitute a sufficient ground, in the court's discretion, for
11 granting the motion.

12 (4) Any reply to the opposition shall be served and filed by the
13 moving party not less than five days preceding the noticed or
14 continued date of hearing, unless the court for good cause orders
15 otherwise.

16 (5) Evidentiary objections not made at the hearing shall be
17 deemed waived.

18 (6) Except for subdivision (c) of Section 1005 relating to the
19 method of service of opposition and reply papers, Sections 1005
20 and 1013, extending the time within which a right may be
21 exercised or an act may be done, do not apply to this section.

22 (7) Any incorporation by reference of matter in the court's file
23 shall set forth with specificity the exact matter to which reference
24 is being made and shall not incorporate the entire file.

25 (c) The motion for summary judgment shall be granted if all
26 the papers submitted show that there is no triable issue as to any
27 material fact and that the moving party is entitled to a judgment
28 as a matter of law. In determining whether the papers show that
29 there is no triable issue as to any material fact the court shall
30 consider all of the evidence set forth in the papers, except that to
31 which objections have been made and sustained by the court, and
32 all inferences reasonably deducible from the evidence, except
33 summary judgment may not be granted by the court based on
34 inferences reasonably deducible from the evidence, if
35 contradicted by other inferences or evidence, which raise a
36 triable issue as to any material fact.

37 (d) Supporting and opposing affidavits or declarations shall be
38 made by any person on personal knowledge, shall set forth
39 admissible evidence, and shall show affirmatively that the affiant
40 is competent to testify to the matters stated in the affidavits or

1 declarations. Any objections based on the failure to comply with
2 the requirements of this subdivision shall be made at the hearing
3 or shall be deemed waived.

4 (e) If a party is otherwise entitled to a summary judgment
5 pursuant to this section, summary judgment may not be denied
6 on grounds of credibility or for want of cross-examination of
7 witnesses furnishing affidavits or declarations in support of the
8 summary judgment, except that summary judgment may be
9 denied in the discretion of the court, where the only proof of a
10 material fact offered in support of the summary judgment is an
11 affidavit or declaration made by an individual who was the sole
12 witness to that fact; or where a material fact is an individual's
13 state of mind, or lack thereof, and that fact is sought to be
14 established solely by the individual's affirmation thereof.

15 (f) (1) A party may move for summary adjudication as to one
16 or more causes of action within an action, one or more
17 affirmative defenses, one or more claims for damages, or one or
18 more issues of duty, if that party contends that the cause of action
19 has no merit or that there is no affirmative defense thereto, or that
20 there is no merit to an affirmative defense as to any cause of
21 action, or both, or that there is no merit to a claim for damages,
22 as specified in Section 3294 of the Civil Code, or that one or
23 more defendants either owed or did not owe a duty to the
24 plaintiff or plaintiffs. A motion for summary adjudication shall
25 be granted only if it completely disposes of a cause of action, an
26 affirmative defense, a claim for damages, or an issue of duty.

27 (2) A motion for summary adjudication may be made by itself
28 or as an alternative to a motion for summary judgment and shall
29 proceed in all procedural respects as a motion for summary
30 judgment. However, a party may not move for summary
31 judgment based on issues asserted in a prior motion for summary
32 adjudication and denied by the court, unless that party establishes
33 to the satisfaction of the court, newly discovered facts or
34 circumstances or a change of law supporting the issues reasserted
35 in the summary judgment motion.

36 (g) Upon the denial of a motion for summary judgment, on the
37 ground that there is a triable issue as to one or more material
38 facts, the court shall, by written or oral order, specify one or
39 more material facts raised by the motion as to which the court
40 has determined there exists a triable controversy. This

1 determination shall specifically refer to the evidence proffered in
2 support of and in opposition to the motion which indicates that a
3 triable controversy exists. Upon the grant of a motion for
4 summary judgment, on the ground that there is no triable issue of
5 material fact, the court shall, by written or oral order, specify the
6 reasons for its determination. The order shall specifically refer to
7 the evidence proffered in support of, and if applicable in
8 opposition to, the motion which indicates that no triable issue
9 exists. The court shall also state its reasons for any other
10 determination. The court shall record its determination by court
11 reporter or written order.

12 (h) If it appears from the affidavits submitted in opposition to
13 a motion for summary judgment or summary adjudication or both
14 that facts essential to justify opposition may exist but cannot, for
15 reasons stated, then be presented, the court shall deny the motion,
16 or order a continuance to permit affidavits to be obtained or
17 discovery to be had or may make any other order as may be just.
18 The application to continue the motion to obtain necessary
19 discovery may also be made by ex parte motion at any time on or
20 before the date the opposition response to the motion is due.

21 (i) If, after granting a continuance to allow specified additional
22 discovery, the court determines that the party seeking summary
23 judgment has unreasonably failed to allow the discovery to be
24 conducted, the court shall grant a continuance to permit the
25 discovery to go forward or deny the motion for summary
26 judgment or summary adjudication. This section does not affect
27 or limit the ability of any party to compel discovery under the
28 Civil Discovery Act (Title 4 (commencing with Section
29 2016.010) of Part 4).

30 (j) If the court determines at any time that any of the affidavits
31 are presented in bad faith or solely for purposes of delay, the
32 court shall order the party presenting the affidavits to pay the
33 other party the amount of the reasonable expenses which the
34 filing of the affidavits caused the other party to incur. Sanctions
35 may not be imposed pursuant to this subdivision, except on
36 notice contained in a party's papers, or on the court's own
37 noticed motion, and after an opportunity to be heard.

38 (k) Except when a separate judgment may properly be
39 awarded in the action, no final judgment may be entered on a
40 motion for summary judgment prior to the termination of the

1 action, but the final judgment shall, in addition to any matters
2 determined in the action, award judgment as established by the
3 summary proceeding herein provided for.

4 (l) In actions which arise out of an injury to the person or to
5 property, if a motion for summary judgment was granted on the
6 basis that the defendant was without fault, no other defendant
7 during trial, over plaintiff's objection, may attempt to attribute
8 fault to or comment on the absence or involvement of the
9 defendant who was granted the motion.

10 (m) (1) A summary judgment entered under this section is an
11 appealable judgment as in other cases. Upon entry of any order
12 pursuant to this section, except the entry of summary judgment, a
13 party may, within 20 days after service upon him or her of a
14 written notice of entry of the order, petition an appropriate
15 reviewing court for a peremptory writ. If the notice is served by
16 mail, the initial period within which to file the petition shall be
17 increased by five days if the place of address is within the State
18 of California, 10 days if the place of address is outside the State
19 of California but within the United States, and 20 days if the
20 place of address is outside the United States. If the notice is
21 served by facsimile transmission, Express Mail, or another
22 method of delivery providing for overnight delivery, the initial
23 period within which to file the petition shall be increased by two
24 court days. The superior court may, for good cause, and prior to
25 the expiration of the initial period, extend the time for one
26 additional period not to exceed 10 days.

27 (2) Before a reviewing court affirms an order granting
28 summary judgment or summary adjudication on a ground not
29 relied upon by the trial court, the reviewing court shall afford the
30 parties an opportunity to present their views on the issue by
31 submitting supplemental briefs. The supplemental briefing may
32 include an argument that additional evidence relating to that
33 ground exists, but that the party has not had an adequate
34 opportunity to present the evidence or to conduct discovery on
35 the issue. The court may reverse or remand based upon the
36 supplemental briefing to allow the parties to present additional
37 evidence or to conduct discovery on the issue. If the court fails to
38 allow supplemental briefing, a rehearing shall be ordered upon
39 timely petition of any party.

(n) (1) If a motion for summary adjudication is granted, at the trial of the action, the cause or causes of action within the action, affirmative defense or defenses, claim for damages, or issue or issues of duty as to the motion which has been granted shall be deemed to be established and the action shall proceed as to the cause or causes of action, affirmative defense or defenses, claim for damages, or issue or issues of duty remaining.

(2) In the trial of the action, the fact that a motion for summary adjudication is granted as to one or more causes of action, affirmative defenses, claims for damages, or issues of duty within the action shall not operate to bar any cause of action, affirmative defense, claim for damages, or issue of duty as to which summary adjudication was either not sought or denied.

(3) In the trial of an action, neither a party, nor a witness, nor the court shall comment upon the grant or denial of a motion for summary adjudication to a jury.

(o) A cause of action has no merit if either of the following exists:

(1) One or more of the elements of the cause of action cannot be separately established, even if that element is separately pleaded.

(2) A defendant establishes an affirmative defense to that cause of action.

(p) For purposes of motions for summary judgment and summary adjudication:

(1) A plaintiff or cross-complainant has met his or her burden of showing that there is no defense to a cause of action if that party has proved each element of the cause of action entitling the party to judgment on that cause of action. Once the plaintiff or cross-complainant has met that burden, the burden shifts to the defendant or cross-defendant to show that a triable issue of one or more material facts exists as to that cause of action or a defense thereto. The defendant or cross-defendant may not rely upon the mere allegations or denials of its pleadings to show that a triable issue of material fact exists but, instead, shall set forth the specific facts showing that a triable issue of material fact exists as to that cause of action or a defense thereto.

(2) A defendant or cross-defendant has met his or her burden of showing that a cause of action has no merit if that party has shown that one or more elements of the cause of action, even if

1 not separately pleaded, cannot be established, or that there is a
2 complete defense to that cause of action. Once the defendant or
3 cross-defendant has met that burden, the burden shifts to the
4 plaintiff or cross-complainant to show that a triable issue of one
5 or more material facts exists as to that cause of action or a
6 defense thereto. The plaintiff or cross-complainant may not rely
7 upon the mere allegations or denials of its pleadings to show that
8 a triable issue of material fact exists but, instead, shall set forth
9 the specific facts showing that a triable issue of material fact
10 exists as to that cause of action or a defense thereto.

11 (q) This section does not extend the period for trial provided
12 by Section 1170.5.

13 (r) Subdivisions (a) and (b) do not apply to actions brought
14 pursuant to Chapter 4 (commencing with Section 1159) of Title 3
15 of Part 3.

16 (s) *(1) Notwithstanding subdivision (f), a party may move for*
17 *summary adjudication of a legal issue or a claim for damages*
18 *other than punitive damages that does not completely dispose of*
19 *a cause of action, an affirmative defense, or an issue of duty.*

20 *(2) This motion may only be brought upon the stipulation of*
21 *the parties whose claims or defenses are put at issue by the*
22 *motion and a prior determination by the court that the motion*
23 *will further the interests of judicial economy, by reducing the*
24 *time to be consumed in trial, or significantly increase the ability*
25 *of the parties to resolve the case by settlement.*

26 *(3) Before a motion may be filed pursuant to this subdivision,*
27 *the parties shall submit to the court a joint stipulation clearly*
28 *setting forth the issue or issues to be adjudicated, with a*
29 *declaration from each stipulating party demonstrating that a*
30 *ruling on the motion will further the interests of judicial economy*
31 *by reducing the time to be consumed in trial or significantly*
32 *increasing the probability of settlement. Within 15 days of the*
33 *court's receipt of the stipulation and declarations, the court shall*
34 *notify the submitting parties as to whether the motion may be*
35 *filed. If the court elects not to allow the filing of the motion, the*
36 *stipulating parties may request, and upon that request the court*
37 *shall conduct, an informal conference with the stipulating parties*
38 *to permit further evaluation of the proposed stipulation; but no*
39 *further papers may be filed by the parties in support of the*
40 *proposed motion.*

1 (4) Any motion for summary adjudication brought under this
2 subdivision shall contain the following language, or its
3 substantial equivalent, in the notice of motion:

4 “This motion is made pursuant to subdivision (s) of Section
5 437c of the Code of Civil Procedure. The parties to this motion
6 stipulate that the court shall hear the motion and that the
7 resolution of this motion will either further the interests of
8 judicial economy by reducing the time to be consumed in trial or
9 significantly increase the ability of the parties to resolve the case
10 by settlement.”

11 (5) The notice of motion shall be signed by counsel for all
12 parties, and by those parties in propria persona, to the motion.

13 (6) The joint stipulation shall be served on all parties, if any,
14 who are not parties to the motion specified in paragraph (1). If,
15 within 10 days of the submission of the stipulation, any
16 nonstipulating party files an objection to the determination of the
17 issue, the court may consider the objection in determining
18 whether or not to allow the motion to be filed.

19 (7) A motion for summary adjudication brought pursuant to
20 this subdivision may be made by itself or as an alternative to a
21 motion for summary judgment and shall proceed in all
22 procedural respects as a motion for summary judgment.

23 (t) For the purposes of this section, a change in law does not
24 include a later enacted statute without retroactive application.